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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

CYNTHIA MARTINEZ, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DENNY'S, INC., a Florida corporation; and
DOES 1 through 50, inclusive,

ELECTRONICALLY FILED

Superior Court of California,
County of Kern

By: Julia Barrera
Deputy Clerk

08/27/26 10:38 AM

Case No. 26CUB00262

(Assigned to Hon. Gregory A. Pulskamp, Dept. J)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

**(1) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));**

**(2) Violation of Labor Code
(Lab Code §§ 2698 et seq.**

DEMAND OVER \$35,000.00

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1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State, Plaintiff, Cynthia Martinez, submits this First Amended Class and
3 Representative Action Complaint (the “Complaint”) against Defendant, Denny’s, Inc., and Does 1
4 through 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who work for Defendants. The
8 Complaint seeks penalties and other relief for Defendants’ violations of Labor Code section 226(a).¹

9 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
10 intentionally and with deliberate indifference and conscious disregard to the rights of employees.
11 Defendants routinely fail to provide a complete and accurate itemized wage statement in writing to
12 Plaintiff and other non-exempt employees. Specifically, whenever overtime wages are paid to Plaintiff
13 and other non-exempt employees, Defendants issue wage statements that fail to accurately itemize and
14 show the total hours worked. When the hours shown on the wage statements are added up, the sum also
15 does not equal the total hours worked. Plaintiff and other non-exempt employees cannot promptly and
16 easily determine from the face of Defendants’ wage statements the total hours worked. Defendants thus
17 violate Section 226(a) and owe applicable penalties to Plaintiffs and other non-exempt employees.

18 3. Plaintiff is informed and believes that Defendants have engaged in, among other things,
19 a system of willful violations of the Labor Code by creating and maintaining policies, practices, and
20 customs that knowingly deny its employees the above stated rights and benefits.

21 JURISDICTION AND VENUE

22 4. The Complaint seeks more than \$35,000.00 in relief. The Court has jurisdiction of
23 Defendants’ violations of Section 226(a).

24 5. Venue is proper. Plaintiff worked for Defendants in Bakersfield, California.

25 PARTIES

26 6. Throughout Plaintiff’s employment, Plaintiff was paid on an hourly basis as a non-
27 exempt employee. Plaintiff also earned overtime wages. Defendants consistently issued Plaintiff wage
28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 statements that failed to itemize and show the accurate total hours worked. Plaintiff thus is a victim of
2 the policies, practices, and customs of Defendants complained of in this action in ways that have
3 deprived Plaintiff of the rights guaranteed by the Labor Code.

4 7. Plaintiff is informed and believes that Denny's, Inc., was and is a Florida corporation.
5 Plaintiff is informed and believes that at all times herein mentioned Defendant and Does 1 through 50,
6 are and were corporations, business entities, individuals, or partnerships that were and are licensed to
7 do business and actually doing business in the State of California. The facts and circumstances of
8 Defendants' business subject Defendants to Section 226(a).

9 8. Plaintiff does not know the true names or capacities of the defendants sued as Does 1
10 through 50, whether individual, partner, or corporate, and thus sues them under such fictitious names.
11 Plaintiff prays for leave to amend this Complaint when the true names and capacities are known.
12 Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way
13 for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and
14 injuries complained of herein.

15 9. At all times herein mentioned, each of said Defendants participated in the doing of the
16 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
17 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
18 scope of said agency and employment.

19 10. Plaintiff is informed and believes that at all times material hereto, each of said
20 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
21 each of the other Defendants and was acting within the course and scope of such agency, employment,
22 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
23 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
24 omissions of the acting Defendants.

25 11. Plaintiff is informed and believes that at all times material hereto each of the Defendants
26 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the
27 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
28 pursuance of, a joint venture, partnership, or common enterprise.

1 **CLASS ACTION ALLEGATIONS**

2 12. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiffs seek class
3 certification of the following class: all current and former non-exempt employees of Defendants in the
4 State of California who were paid overtime wages at any time since January 23, 2025 (the “Class”).

5 13. **Numerosity and Ascertainability:** The members of the Class are so numerous that
6 joinder of all members would be impractical, if not impossible. The identities of the members of the
7 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
8 informed and believes that whenever non-exempt employees in California are paid wages Defendants
9 violate Section 226(a) by failing to provide complete and accurate itemized wage statements that show
10 the actual total hours worked.

11 14. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
12 represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready,
13 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff’s attorneys have
14 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
15 and-hour class actions currently pending in California state and federal courts.

16 15. **Common Question of Law and Fact:** There are predominant common questions of law
17 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
18 informed and believes that Defendants uniformly administer a corporate policy and practice of
19 routinely failing to provide complete and accurate itemized wage statements that show the actual total
20 hours worked.

21 16. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
22 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
23 Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis and earned
24 overtime wages. Whenever overtime wages have been paid during Plaintiff’s employment, Defendants
25 have consistently issued Plaintiff wage statements that fail to show the accurate total hours worked.
26 Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

27 17. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
28 in establishing minimum working conditions and requirements in California. These labor standards

1 protect employees from onerous terms and conditions of employment or exploitation by employers who
2 have superior economic and bargaining power.

3 18. The nature of this action and the format of laws available to Plaintiff and members of the
4 Class make the class action format a particularly efficient and appropriate procedure to redress the
5 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
6 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
7 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
8 legal resources. Requiring each member of the Class to pursue an individual remedy would also
9 discourage the assertion of lawful claims by employees who would be disinclined to file an action
10 against their former or current employer for real and justifiable fear of retaliation and permanent
11 damage to their careers at their current or subsequent employment.

12 19. The prosecution of separate actions by individual members of the Class, even if
13 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
14 individual members of the Class that would establish potentially incompatible standards of conduct for
15 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
16 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
17 of other members of the Class not parties to the adjudications. Further, the claims of the individual
18 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
19 the concomitant costs and expenses.

20 20. Defendants' pattern, practice, and uniform administration of corporate policy in
21 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will
22 establish the rights of Plaintiff and the Class under Section 226, the applicable IWC Wage Order, and
23 Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and
24 costs of suit.

25 **FIRST CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 226(A)**

27 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

28 21. The preceding paragraphs are re-alleged and incorporated by this reference.

1 22. Section 226(a) requires employers to provide itemized wage statements to their
2 employees that show accurate information, including without limitation, the total hours worked.
3 Whenever Defendants pay overtime wages to Plaintiff and the Class, Defendants fail to provide
4 complete and accurate itemized wage statements, in violation of Section 226(a).

5 23. As a matter of policy and practice, Defendants routinely fail to provide complete and
6 accurate itemized wage statements to Plaintiff and the Class. Specifically, whenever overtime wages
7 are paid to Plaintiff and the Class, Defendants issue wage statements that fail to accurately itemize and
8 show the total hours worked. When the hours shown on the wage statements are added up, the sum also
9 does not equal the total hours worked. Plaintiff and the Class cannot promptly and easily determine
10 from the face of Defendants' wage statements the total hours worked. Defendants thus violate Section
11 226(a) and owe applicable penalties to Plaintiff and the Class.

12 24. Such a pattern, practice, and uniform administration of corporate policy is unlawful
13 under Section 226(a) and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees,
14 and costs of suit.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

17 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

18 25. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
19 fully set for herein.

20 26. Plaintiff brings this cause of action as a proxy for the State of California and in this
21 capacity, seeks penalties on behalf of all Aggrieved Employees from January 23, 2025 through the
22 present, for Defendants' violations of Labor Code §§ 226 and 2698, *et seq.* Specifically, whenever
23 overtime wage were paid to Plaintiff and Aggrieved Employees, the wage statements failed to identify
24 all of the applicable overtime rates of pay for such wages.

25 27. On or about January 23, 2026, Plaintiff submitted his written notice to the California
26 Labor & Workforce Development Agency ("LWDA") and to Defendants via certified mail regarding
27 Defendants' violations of Labor Code §226, pursuant to Labor Code § 2698, *et seq.*
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28. As of the date of the filing of this Complaint, the LWDA has not provided written notice as to whether it intends to investigate the Labor Code violations set forth in Plaintiff's written notice and, thus, allowing Plaintiff to proceed under PAGA against Defendants for said violations. Therefore, Plaintiff may seek all applicable penalties under the PAGA.

29. Pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable remedies under the PAGA for Defendants' violation of Labor Code § 226, for the time periods described above on behalf of all other Aggrieved Employees, including without limitation, civil penalties under Labor Code § 2699, any remedies under Labor Code § 226.3, and for costs and attorneys' fees

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgment for Plaintiff and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for penalties pursuant to Section 226(e), and for costs and attorneys' fees;
5. Upon the Second Cause of Action, according to proof pursuant to the PAGA, Labor Code §§ 226.3 and 2699, and for costs and attorneys' fees;
6. Upon each cause of action for attorneys' fees and costs as provided by Sections 226(h) and Code of Civil Procedure section 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

DATED: August 27, 2026

DIVERSITY LAW GROUP, P.C.
LAW OFFICES OF CHOI & ASSOCIATES, APLC

By:

Edward W. R.

Edward W. Choi

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St. Suite 1250, Los Angeles, California 90071. My email address is: jackie@choiandassociates.com

On August 27, 2026, I served the foregoing document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

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 X **BY ELECTRONIC SERVICE**

I caused such document to be served on the offices of the addressees via electronic mail.

X (State) I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 27, 2026, at Los Angeles, California.



Jacqueline Park